

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF WASHINGTON

8 DARRELL THOMAS WILSON,

9 Plaintiff,

10 vs.

11 NANCY A. BERRYHILL,
12 Acting Commissioner of Social
13 Security,

14 Defendant.

No. 2:16-CV-00005-LRS

**ORDER GRANTING
DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT,
INTER ALIA**

15 **BEFORE THE COURT** are the Plaintiff's Motion For Summary Judgment
16 (ECF No. 13) and the Defendant's Motion For Summary Judgment (ECF No. 14).
17

18 **JURISDICTION**

19 Darrell Thomas Wilson, Plaintiff, applied for Title XVI Supplemental Security
20 Income benefits (SSI) on August 9, 2012. The application was denied initially and
21 on reconsideration. Plaintiff timely requested a hearing which was held on January
22 23, 2015 before Administrative Law Judge (ALJ) R.J. Payne. Plaintiff testified at the
23 hearing, as did Medical Expert (ME), Margaret Moore, Ph.D.. A supplemental
24 hearing was held on May 13, 2015 at which Vocational Expert (VE) Daniel
25 McKinney testified. On June 10, 2015, the ALJ issued a decision finding the Plaintiff
26 not disabled. The Appeals Council denied a request for review of the ALJ's decision,
27 making that decision the Commissioner's final decision subject to judicial review.
28

**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT- 1**

1 The Commissioner's final decision is appealable to district court pursuant to 42
2 U.S.C. §405(g) and §1383(c)(3).

4 STATEMENT OF FACTS

5 The facts have been presented in the administrative transcript, the ALJ's
6 decision, the Plaintiff's and Defendant's briefs, and will only be summarized here. At
7 the time of the administrative hearings, Plaintiff was 53 years old. He has past
8 relevant work experience as a general clerk, survey worker, sanitor¹ and food
9 deliverer. At the hearing, Plaintiff amended his alleged disability onset date to
10 August 10, 2012. On that date, he was 50 years old.

12 STANDARD OF REVIEW

13 "The [Commissioner's] determination that a claimant is not disabled will be
14 upheld if the findings of fact are supported by substantial evidence...." *Delgado v.*
15 *Heckler*, 722 F.2d 570, 572 (9th Cir. 1983). Substantial evidence is more than a mere
16 scintilla, *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975), but less
17 than a preponderance. *McAllister v. Sullivan*, 888 F.2d 599, 601-602 (9th Cir. 1989);
18 *Desrosiers v. Secretary of Health and Human Services*, 846 F.2d 573, 576 (9th Cir.
19 1988). "It means such relevant evidence as a reasonable mind might accept as
20 adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401, 91
21 S.Ct. 1420 (1971). "[S]uch inferences and conclusions as the [Commissioner] may
22 reasonably draw from the evidence" will also be upheld. *Beane v. Richardson*, 457
23 F.2d 758, 759 (9th Cir. 1972); *Mark v. Celebrezze*, 348 F.2d 289, 293 (9th Cir. 1965).
24 On review, the court considers the record as a whole, not just the evidence supporting

26 ¹ Another name for sanitation worker, per the VE's testimony. (AR at p.
27 83).

28 **ORDER GRANTING DEFENDANT'S**
MOTION FOR SUMMARY JUDGMENT- 2

1 the decision of the Commissioner. *Weetman v. Sullivan*, 877 F.2d 20, 22 (9th Cir.
2 1989); *Thompson v. Schweiker*, 665 F.2d 936, 939 (9th Cir. 1982).

3 It is the role of the trier of fact, not this court to resolve conflicts in evidence.
4 *Richardson*, 402 U.S. at 400. If evidence supports more than one rational
5 interpretation, the court must uphold the decision of the ALJ. *Allen v. Heckler*, 749
6 F.2d 577, 579 (9th Cir. 1984).

7 A decision supported by substantial evidence will still be set aside if the proper
8 legal standards were not applied in weighing the evidence and making the decision.
9 *Browner v. Secretary of Health and Human Services*, 839 F.2d 432, 433 (9th Cir.
10 1987).

11 12 **ISSUE**

13 Plaintiff argues the ALJ erred in discrediting his testimony about his
14 symptoms and in discounting the opinions of Dr. Mabee.

15 16 **DISCUSSION**

17 **SEQUENTIAL EVALUATION PROCESS**

18 The Social Security Act defines "disability" as the "inability to engage in any
19 substantial gainful activity by reason of any medically determinable physical or
20 mental impairment which can be expected to result in death or which has lasted or can
21 be expected to last for a continuous period of not less than twelve months." 42
22 U.S.C. § 1382c(a)(3)(A). The Act also provides that a claimant shall be determined
23 to be under a disability only if his impairments are of such severity that the claimant
24 is not only unable to do his previous work but cannot, considering his age, education
25 and work experiences, engage in any other substantial gainful work which exists in
26 the national economy. *Id.*

27 ///

28 **ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT- 3**

1 The Commissioner has established a five-step sequential evaluation process for
2 determining whether a person is disabled. 20 C.F.R. § 416.920; *Bowen v. Yuckert*,
3 482 U.S. 137, 140-42, 107 S.Ct. 2287 (1987). Step one determines if he is engaged
4 in substantial gainful activities. If he is, benefits are denied. 20 C.F.R. §
5 416.920(a)(4)(i). If he is not, the decision-maker proceeds to step two, which
6 determines whether the claimant has a medically severe impairment or combination
7 of impairments. 20 C.F.R. § 416.920(a)(4)(ii). If the claimant does not have a severe
8 impairment or combination of impairments, the disability claim is denied. If the
9 impairment is severe, the evaluation proceeds to the third step, which compares the
10 claimant's impairment with a number of listed impairments acknowledged by the
11 Commissioner to be so severe as to preclude substantial gainful activity. 20 C.F.R.
12 § 416.920(a)(4)(iii); 20 C.F.R. § 404 Subpart P, App. 1. If the impairment meets or
13 equals one of the listed impairments, the claimant is conclusively presumed to be
14 disabled. If the impairment is not one conclusively presumed to be disabling, the
15 evaluation proceeds to the fourth step which determines whether the impairment
16 prevents the claimant from performing work he has performed in the past. If the
17 claimant is able to perform his previous work, he is not disabled. 20 C.F.R. §
18 416.920(a)(4)(iv). If the claimant cannot perform this work, the fifth and final step
19 in the process determines whether he is able to perform other work in the national
20 economy in view of his age, education and work experience. 20 C.F.R. §
21 416.920(a)(4)(v).

22 The initial burden of proof rests upon the claimant to establish a prima facie
23 case of entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th
24 Cir. 1971). The initial burden is met once a claimant establishes that a physical or
25 mental impairment prevents him from engaging in his previous occupation. The
26 burden then shifts to the Commissioner to show (1) that the claimant can perform
27 other substantial gainful activity and (2) that a "significant number of jobs exist in the
28

**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT- 4**

1 national economy" which claimant can perform. *Kail v. Heckler*, 722 F.2d 1496,
2 1498 (9th Cir. 1984).

3 **ALJ'S FINDINGS**

4 The ALJ found the following: 1) Plaintiff has "severe" medical impairments,
5 those being: diabetes mellitus; hepatitis C; degenerative joint disease; status post
6 arthroscopy on the left knee; affective disorder; anxiety-related disorder; and
7 personality disorder, not otherwise specified, with antisocial traits; 2) Plaintiff's
8 impairments do not meet or equal any of the impairments listed in 20 C.F.R. § 404
9 Subpart P, App. 1; 3) Plaintiff has the residual functional capacity (RFC) to perform
10 less than the full range of medium work as defined in 20 C.F.R. § 416.967(c): he can
11 lift no more than 50 pounds occasionally and can lift and carry 25 pounds frequently;
12 sit for six hours in an eight hour workday; stand and walk six hours in an eight hour
13 workday, in any combination, with normal breaks; occasionally crouch, kneel, crawl,
14 climb ramps or stairs, with no climbing of ladders, ropes or scaffolds; should avoid
15 all concentrated exposure to pulmonary irritants and hazards such as unprotected
16 heights and hazardous machinery; is able to understand, remember and carry out both
17 simple and more complex job instructions and tasks; can have superficial or
18 occasional contact with coworkers and supervisors (but no over-the-shoulder type
19 supervision); and is able to remain reasonably attentive and responsive in a work
20 setting and is able to carry out normal work assignments satisfactorily; 4) Plaintiff's
21 RFC precludes him from performing his past relevant work, but allows him to
22 perform other jobs existing in significant numbers in the national economy as
23 identified by the VE, including production assembler, electronics worker, garment
24 sorter, packing line worker and hand packager. Accordingly, the ALJ concluded the
25 Plaintiff has not been disabled at any time since August 10, 2012.

26 ///

27 ///

28 **ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT- 5**

CREDIBILITY

Where, as here, the Plaintiff has produced objective medical evidence of an underlying impairment that could reasonably give rise to some degree of the symptoms alleged, and there is no affirmative evidence of malingering, the ALJ's reasons for rejecting the Plaintiff's testimony must be clear and convincing. *Garrison v. Colvin*, 759 F.3d 95, 1014 (9th Cir. 2014); *Burrell v. Colvin*, 775 F.3d 1133, 1137 (9th Cir. 2014). If an ALJ finds a claimant's subjective assessment unreliable, "the ALJ must make a credibility determination with findings sufficiently specific to permit [a reviewing] court to conclude that the ALJ did not arbitrarily discredit [the] claimant's testimony." *Thomas v. Barnhart*, 278 F.3d 947, 958 (9th Cir.2002). Among other things, the ALJ may consider: 1) the claimant's reputation for truthfulness; 2) inconsistencies in the claimant's testimony or between his testimony and his conduct; 3) the claimant's daily living activities; 4) the claimant's work record; and 5) testimony from physicians or third parties concerning the nature, severity, and effect of claimant's condition. *Id.*

Subjective testimony cannot be rejected solely because it is not corroborated by objective medical findings, but medical evidence is a relevant factor in determining the severity of a claimant's impairments. *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001). The ALJ noted that Plaintiff testified to having chronic pain in multiple joints and that CHAS (Community Health Association of Spokane) records indicated he had been on narcotics for a long period of time, "however, there was suspicion he had been trading his prescription benzodiazepines and hydrocodone, and although he denied this allegation [citation omitted], there is very little support in the CHAS records for the need for long-term narcotics pain medication." (AR at p. 27). This is not a "clear and convincing" reason for discounting Plaintiff's credibility, considering there was no more than suspicion that Plaintiff was trading

///

**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT- 6**

1 prescription medication and considering the ALJ offered his own non-medical
2 opinion that Plaintiff did not need these medications on a long-term basis.

3 The ALJ pointed out that Plaintiff was experiencing only mild pain with
4 flexion of the lumbar spine, his left hip x-ray was normal, and while he had
5 documented degenerative disease of the left knee, he had recovered well after
6 arthroscopy on the left knee and there was nothing in the record to support his
7 testimony that he was also having problems with his right knee. (AR at p. 27). There
8 indeed appears to be nothing in the medical record establishing a severe medically
9 determinable impairment with regard to Plaintiff's right knee and the record
10 establishes that Plaintiff recovered well from left knee arthroscopy in February 2013
11 ("good range of motion, minimal tenderness [and] minimal swelling"). (AR at p.
12 799). This was a clear and convincing reason to discount Plaintiff's credibility with
13 regard to exertional limitations he attributed to knee pain.

14 The ALJ observed that while it was possible Plaintiff had increased pain while
15 undergoing treatment for hepatitis C from January to April 2014, his "complaints
16 were really quite minimal, and he managed to come out of treatment with a negative
17 viral load, despite his alcohol relapse." (AR at p. 27). In December 2014, Plaintiff
18 confirmed that his treatment for hepatitis C had been successful and there was no
19 trace or sign remaining. (AR at p. 958). Accordingly, to the extent Plaintiff
20 attributed any of his physical limitations to hepatitis C, the objective medical
21 evidence cited by the ALJ constituted a "clear and convincing" reason for discounting
22 Plaintiff's credibility.

23 The ALJ cited inconsistent statements made by Plaintiff as impacting his
24 veracity as a witness. "One strong indication of the credibility of an individual's
25 statements is their consistency, both internally and with other information in the case
26 record." Social Security Ruling (SSR) 96-7, available at 1996 WL 374186 at *5. "In
27 assessing the claimant's credibility, the ALJ may use ordinary techniques of
28

**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT- 7**

1 credibility evaluation, such as considering the claimant's reputation for truthfulness
2 and any inconsistent statements in [his] testimony." *Tonapeytan v. Halter*, 242 F.3d
3 1144, 1148 (9th Cir. 2001). The ALJ noted that Plaintiff claimed to be a former law
4 enforcement officer, although review of his earnings record and his work history
5 report failed to support that claim. (AR at p. 27). Plaintiff made this claim during an
6 August 2011 psychological evaluation by John Arnold, Ph.D. (AR at p. 396).
7 Plaintiff does not deny he made such a claim, but contends it occurred when he was
8 a homeless alcoholic. Plaintiff does not, however, claim he made the statement while
9 under the influence of alcohol and Dr. Arnold noted that mental health testing
10 suggested Plaintiff was capable of mentally manipulating numbers and letters, was
11 making an appropriate effort during evaluation, and was capable of understanding
12 simple instructions in the work setting. (AR at p. 396). Plaintiff also contends that
13 because this statement was made prior to his alleged onset date (August 10, 2012),
14 it cannot be considered because it is outside the relevant period, citing *Lingenfelter*
15 *v. Astrue*, 504 F.3d 1028, 1036-37 (9th Cir. 2007). *Lingenfelter* does not stand for the
16 broad proposition that an ALJ may not consider statements made by a claimant **prior**
17 to his alleged disability onset date. Instead, based on the particular facts presented
18 in that case, the fact that Lingenfelter, **after** the relevant time period during which he
19 claimed to be disabled and facing difficult economic circumstances, tried to work for
20 nine weeks and failed because of his impairments, was not a clear and convincing
21 reason for concluding his symptoms could not have precluded him from maintaining
22 employment during the relevant time period. *Lingenfelter*, 504 F.3d at 1036-37.

23 Nor does *Lingenfelter* preclude consideration of the results of the June 29,
24 2012 psychological evaluation conducted by Dr. Arnold simply because those results
25 pre-dated the alleged onset date of disability by a little over one month. Those results
26 are appropriately considered in conjunction with the results of the mental health
27 evaluations which took place after the alleged onset date of disability. That Dr.

28
**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT- 8**

1 Arnold found Plaintiff's MMPI-2-RF² profile in June 2012 to be invalid (elevated
2 beyond the level of interpretation such as to suggest over reporting of severe
3 psychological, cognitive and somatic dysfunction) (AR at p. 386) was a "clear and
4 convincing" reason for discounting Plaintiff's credibility when considered in
5 conjunction with the record as a whole, as discussed herein.

6 A progress note from Frontier Behavioral Health dated March 4, 2014 contains
7 a notation that Plaintiff had been "going through chemo [treatment] for liver ca,
8 hepatitis, plus daily chemo meds at home" (AR at p. 1019). The ALJ construed
9 this as the Plaintiff reporting he had liver cancer, but as Plaintiff notes, during this
10 time period he was receiving chemotherapy (interferon) treatment for hepatitis C.
11 (AR at pp. 1020-21). Accordingly, it is unclear from the record that Plaintiff asserted
12 to anyone that he had liver cancer in addition to hepatitis C. Therefore, this was not
13 a clear or convincing reason to discount Plaintiff's credibility.

14 Poor work history is an appropriate factor to consider when evaluating a
15 claimant's credibility. *Thomas*, 278 F.3d at 959. Plaintiff testified he last worked in
16 2007 at a temporary job for a couple of months. (AR at p. 56). He testified that he
17 performed a number of different jobs over the past 15 years, but most of them were
18 very brief and his earnings were limited. (AR at pp. 56-57). Plaintiff attributed his
19 sporadic and limited work history to being robbed when he was working as an
20 assistant manager at a Pizza Hut around 1997. (AR at pp. 59-60). According to
21 Plaintiff, he had been robbed four times since then, causing him to suffer from post-
22 traumatic stress disorder (PTSD). (AR at p. 60). Because of the PTSD, Plaintiff
23 asserted he could not work around people. (AR at p. 60). The ALJ found "[t]he
24 claimant has had a very poor work history since 1995 and while this may support his
25 testimony at the hearing that was when he was assaulted the first time, his testimony
26

27 ² Minnesota Multiphasic Personality Inventory-2-Restructured Form.
28

1 of being assaulted four times is inconsistent with other claims (i.e, being assaulted
2 three times . . .).” (AR at p. 27). The ALJ clearly gave some credence to Plaintiff’s
3 assertion that he has difficulty working around other people. As part of his RFC
4 determination, the ALJ found that Plaintiff could only have superficial or occasional
5 contact with coworkers and supervisors (but no over-the-shoulder type supervision).
6 Furthermore, there is no inconsistency between Plaintiff testifying at the hearing that
7 he had been robbed four times since 1997, while telling Dr. Arnold in June 2012 he
8 had been robbed and beaten about three times. (AR at p. 386). Accordingly,
9 Plaintiff’s poor work history is not a clear and convincing reason for discounting his
10 credibility.

11 The ALJ pointed out that Plaintiff has a “significant criminal history, including
12 DUI, many arrests for assaults while drinking, trespass, open containers, disorderly
13 conduct, and selling a medical drug without a prescription and possession of a
14 medical drug without a prescription.” (AR at p. 27). An ALJ may discredit a
15 claimant’s allegations based on relevant character evidence including criminal
16 history. *Bunnell v. Sullivan*, 947 F.2d 341, 346 (9th Cir. 1991). Convictions for
17 crimes of moral turpitude are a proper basis for an adverse credibility determination.
18 *Allbidrez v. Astrue*, 504 F.Supp.2d 814, 822 (C.D. Cal. 2007). It is unclear whether
19 any of Plaintiff’s convictions were for crimes of moral turpitude or involved
20 dishonesty and in any event, the ALJ did not explain the how Plaintiff’s convictions
21 impacted his credibility. Accordingly, this court cannot find Plaintiff’s criminal
22 history is a clear and convincing reason for discounting his credibility.

23 Evidence about daily activities is properly considered in making a credibility
24 determination. *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989). Here, the ALJ
25 found:

26 [Plaintiff’s] activities of daily living are generally quite full,
27 and include all self-care . . . household chores, and shopping
28 . . . although he currently lives where chores are minimal.
While he does have some social issues with anger and irritability

**ORDER GRANTING DEFENDANT’S
MOTION FOR SUMMARY JUDGMENT- 10**

1 . . . , he is able to take the bus, shop, attend his appointments,
2 travel to Florida, attend AA meetings, and has a roommate
3 He downplayed his work on computers at the hearing,
4 but records . . . indicate he was working on computers and
updating websites as a small side business, as well as
his later claim . . . that he continued to work on computers
and maintain his mother's church's website in Florida.

5 (AR at p. 28).

6 Plaintiff testified that while he did not "consult" for computers, he did help
7 some of the people around his group residence with their computers. (AR at p. 70).
8 On September 4, 2014, Plaintiff reportedly told his therapist at Frontier Behavioral
9 Health that he had been working on computer and maintaining the website for his
10 mother's church in Florida. (AR at p. 973). On August 7, 2014, he reportedly told
11 his therapist that he was working on computers "and updating websites as a small side
12 business." (AR at p. 975). And on May 13, 2014, when he was psychologically
13 evaluated by W. Scott Mabree, Ph.D., Plaintiff reported he was living with a roommate
14 with whom he did not have any conflicts and that he was independent for basic self-
15 care. (AR at p. 952).

16 The medical record, as discussed below, provides substantial evidence in
17 support of the ALJ's RFC determination and, in turn, supports the ALJ's discounting
18 of Plaintiff's credibility, particularly the ALJ's conclusion that Plaintiff's daily living
19 activities exceeded what he testified he was physically and mentally capable of doing.
20 Plaintiff's daily living activities are a clear and convincing reason for discounting
21 Plaintiff's credibility.

22 Although, as discussed above, not all of the reasons the ALJ offered for
23 discounting Plaintiff's credibility are clear and convincing, enough of them are so as
24 to constitute substantial evidence in support of the ALJ's ultimate credibility finding.
25 *Carmickle v. Comm'r Soc. Sec. Admin.*, 533 F.3d 1155, 1162-63 (9th Cir. 2008).

26 ///

27 ///

28 **ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT- 11**

MEDICAL OPINIONS

It is settled law in the Ninth Circuit that in a disability proceeding, the opinion of a licensed treating or examining physician or psychologist is given special weight because of his/her familiarity with the claimant and his/her condition. If the treating or examining physician's or psychologist's opinion is not contradicted, it can be rejected only for clear and convincing reasons. *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998); *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996). If contradicted, the ALJ may reject the opinion if specific, legitimate reasons that are supported by substantial evidence are given. *Id.* “[W]hen evaluating conflicting medical opinions, an ALJ need not accept the opinion of a doctor if that opinion is brief, conclusory, and inadequately supported by clinical findings.” *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005). The opinion of a non-examining medical advisor/expert need not be discounted and may serve as substantial evidence when it is supported by other evidence in the record and consistent with the other evidence. *Andrews v. Shalala*, 53 F.3d 1035, 1041 (9th Cir. 1995).

Plaintiff alleges the ALJ improperly discredited the limitations opined by Dr. Mabee in favor of those opined by Dr. Moore, the medical expert who testified at the hearing. On the evaluation form which he completed for Washington Department of Social and Health Services (DSHS), Dr. Mabee opined that Plaintiff had moderate (“significant”) limitations in his abilities to understand, remember, and persist in tasks by following detailed instructions; learn new tasks; and maintain appropriate behavior in a work setting. He further opined that Plaintiff had marked (“very significant”) limitations in his abilities to perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances without special supervision; communicate and perform effectively in a work setting; and complete a normal work day and work week without interruptions from

///

**ORDER GRANTING DEFENDANT’S
MOTION FOR SUMMARY JUDGMENT- 12**

1 psychologically based symptoms. (AR at p. 954). The VE testified that these
2 limitations would preclude any type of competitive employment. (AR at p. 89).

3 The ALJ discounted Dr. Mabee's opinion, finding that it contradicted "clinical
4 findings set forth in narrative treating and examining source medical reports of
5 record." (AR at p. 29). The ALJ cited testimony from Dr. Moore that she saw no
6 evidence of psychosis or significant anxiety and "felt there were inconsistencies . .
7 . including what was said about the claimant's appearance and what he was actually
8 able to do, which included getting along with his roommate, and engaging in work-
9 like activity setting up and maintaining web sites, as well as the generally normal
10 mental status exams and Trailmaking tests." (AR at p. 29).

11 In his report, Dr. Mabee noted that Plaintiff had been most recently seen in his
12 office (NW Behavioral Health Clinic) by Dr. Arnold in June 2012, and before that in
13 August 2011. (AR at p. 952). Dr. Mabee reviewed those prior evaluations to
14 "structure" his evaluation. (AR at p. 952). In August 2011, Dr. Arnold indicated that
15 Plaintiff scored within the average range on the MMSE (Mini-Mental State
16 Examination) and "[h]is results on the Trails A & B were also with the normal range
17 suggesting he is capable of mentally manipulating numbers and letters." (AR at p.
18 396). Dr. Arnold opined that Plaintiff was moderately limited in certain cognitive and
19 social categories, but did not opine that there were any marked limitations. (AR at
20 p. 395). As noted, in his June 2012 report, Dr. Arnold concluded Plaintiff's MMPI
21 profile was invalid which suggested Plaintiff was "over reporting severe
22 psychological, cognitive and somatic dysfunction." (AR at p. 386).

23 Plaintiff later became involved with Frontier Behavior Health Services. Dr.
24 Moore testified there was nothing in the Frontier records that suggested the need for
25 psychotherapy. (AR at p. 45). A review of the Frontier records supports Dr. Moore's
26 testimony. At the hearing, Plaintiff's counsel asked Dr. Moore about an October
27 2014 note from Frontier. As Dr. Moore accurately testified, the diagnoses contained
28

**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT- 13**

1 in that note (AR at p. 963), were carried forward from Plaintiff's first contact with
2 Frontier in January 2013, and the same was true regarding the GAF score of 45.³
3 That was an "intake" GAF score, not a current score. (AR at pp. 51-52). In his
4 evaluation from May 2014, Dr. Mabee assigned the Plaintiff a GAF score of 55.⁴ (AR
5 at p. p. 954). Dr. Moore observed that there was nothing in the October 2014 note
6 describing the Plaintiff as psychotic, no evidence of panic, nothing related to PTSD
7 signs and symptoms, nor was Plaintiff "terribly anxious except for occasional issues
8 around his housing and his roommates and that kind of thing." (AR at p. 52). Indeed,
9 all indications are that the October 2014 mental status exam was entirely normal- e.g.
10 patient has full insight; patient has good judgment; patient has good fund of
11 knowledge with normal memory and normal language. (AR at pp. 962-63).

12 Similar assessments were made at CHAS earlier in 2014. In January 2014, it
13 was reported that Plaintiff was oriented to time, place, person and situation; that his
14 affect was normal; that he was negative for anhedonia⁵, not agitated, not anxious, did
15

16 ³A Global Assessment of Functioning (GAF) score of 41-50 means
17 "serious" symptoms or "serious" impairment in either social, occupational, or
18 school functioning. *American Psychiatric Ass'n, Diagnostic & Statistical Manual*
19 *of Mental Disorders*, (4th ed. Text Revision 2000)(DSM-IV-TR).
20

21 ⁴A Global Assessment of Functioning (GAF) score of 51-60 indicates
22 "moderate symptoms (e.g. flat affect and circumstantial speech, occasional panic
23 attacks) or moderate difficulty in social, occupational, or school functioning (e.g.,
24 few friends, conflicts with peers or co-workers)." *American Psychiatric Ass'n,*
25 *Diagnostic & Statistical Manual of Mental Disorders*, (4th ed. Text Revision
26 2000)(DSM-IV-TR at p. 34).
27

28 ⁵ The inability to experience pleasure from activities usually found
enjoyable.

1 not have pressured speech, did not have suicidal ideation; and was calm, pleasant and
2 comfortable. (AR at p. 889). This assessment was repeated in February and March
3 2014. (AR at pp. 895 and 898).

4 As identified herein, and as set forth by Dr. Moore in her testimony (AR at pp.
5 41-53), there is evidence in the record which supports her opinion about Plaintiff's
6 mental functional limitations and which is consistent with that opinion. Dr. Moore's
7 opinion constitutes a "specific and legitimate" reason to discount Dr. Mabee's
8 opinion and substantial evidence in support of the ALJ's RFC determination
9 regarding Plaintiff's mental functional limitations.

10 Plaintiff indicated that his inability to be around people was the primary reason
11 he could not work. (AR at p. 60). Plaintiff does not cite any medical opinions he
12 asserts are consistent with his testimony about the severity of his physical limitations
13 as opposed to those included as part of the ALJ's RFC determination.

14 15 **CONCLUSION**

16 ALJ Payne rationally interpreted the evidence and "substantial evidence"- more
17 than a scintilla, less than a preponderance- supports his decision that Plaintiff is not
18 disabled.

19 Defendant's Motion For Summary Judgment (ECF No. 14) is **GRANTED** and
20 Plaintiff's Motion For Summary Judgment (ECF No. 13) is **DENIED**. The
21 Commissioner's decision is **AFFIRMED**.

22 **IT IS SO ORDERED.** The District Executive shall enter judgment
23 accordingly and forward copies of the judgment and this order to counsel of record.

24 **DATED** this 10th day of May, 2017.

25
26 *s/Lonny R. Suko*

27

LONNY R. SUKO
28 Senior United States District Judge

**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT- 15**